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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1981

NO. 81 6304

ROGER COLLINS,

Petitioner,

-v-

WALTER D. ZANT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

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March 2, 1982

QUESTIONS PRESENTED

I. Whether the Georgia Supreme Court's reaffirmance of Petitioner's death sentence following a Godfrey remand cured the defects in the trial court's sentencing instructions or the Georgia Supreme Court's inconsistent standard of review of death sentences based upon Ga. Code Ann. §27-2534.1(b)(7).

II. Whether, under the Eighth and Fourteenth Amendments, the Georgia capital sentencing scheme must require the sentencer to make findings concerning mitigating circumstances in order to make the process for imposing a death sentence rationally reviewable.

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

The Petitioner, ROGER COLLINS, prays that a writ of certiorari issue to review the final order of the Supreme Court of Georgia denying review of the order of the Superior Court of Butts County, Georgia in state habeas corpus proceedings. The final order of the Supreme Court of Georgia was entered on December 3, 1981, and the order of the Superior Court of Butts County was entered on August 21, 1981.

OPINION BELOW

The Supreme Court of Georgia did not render an opinion herein. Rather, that court denied review of the opinion of the Superior Court of Butts County. The Supreme Court order denying review is attached hereto as Appendix B. The Superior Court's opinion is unreported and is attached hereto as Appendix A.

JURISDICTION

The final order of the Supreme Court of Georgia was

entered on December 3, 1981. By operation of Georgia law, the judgment of the Superior Court of Butts County was thereby allowed to stand as the final judgment on Petitioner's state habeas corpus proceedings. A petition for rehearing was not filed in the Supreme Court of Georgia. This Court's jurisdiction to review by writ of certiorari is invoked under 28 U.S.C. §1257 (3).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

(1) This case involves the Eighth and Fourteenth Amendments to the United States Constitution.

(2) This case further involves the provisions of the Georgia death penalty statute, Ga. Code Ann. §27-2534.1, et seq. The provisions of the statute relevant to this Petition are set forth as Appendix C to this petition.

STATEMENT OF THE CASE

On the night of August 6, 1977, Roger Collins and two other men, William Durham and Johnny Styles, were driving about their neighborhood in Warner Robins, Georgia, when they offered a ride to a young woman who was a friend of theirs, Delores Luster. (T, 88-90)[1] These men and Ms. Luster drove around for some time thereafter, stopping on one occasion at a grocery store, whose clerk noted that Ms. Luster "seemed relaxed" with her male companions. (T, 90-92; 75, 79; 144-145) After leaving the store, Ms. Luster and her three male companions proceeded to a pecan orchard in rural Houston County where Mr. Collins, Mr. Durham, and Mr. Styles each had sexual intercourse with Ms. Luster. (T, 92-99, 112-117) While engaging in intercourse with

[1] References to the transcript of Petitioner's "Trial and Sentence Proceedings" are noted as "T."

Mr. Collins, Ms. Luster appeared to be engaged in consensual sexual relations. (T, 99, 152) However, when both Durham and Styles engaged in intercourse with Ms. Luster thereafter, she began complaining and made it clear that she was no longer voluntarily engaging in sexual relations. (T, 152-157)

Following the sexual relations, William Durham took Ms. Luster by the hand and led her off into the shadows of the pecan orchard. (T, 118) Prior to that time, Durham had been telling Styles how he planned to kill Ms. Luster, and both Styles and Collins urged Durham not to do such a thing. (T, 113-114, 119, 165) When Durham and Ms. Luster walked to the orchard, Mr. Collins followed them, but was ordered by Durham to retrieve a tire jack from the trunk of the automobile in which they had been traveling. (T, 119, 160-161, 351) Mr. Collins complied with Durham's order and gave the jack to Durham. (T, 351) Thereafter, Durham beat Ms. Luster on the left side of her head and the left side of her body with the tire jack, causing her death from a skull fracture. (T, 351; 47-49, 54) While Johnny Styles was nearby, he could not see who had actually beaten Ms. Luster, but he noted that Mr. Durham brought the tire jack back from the pecan orchard to the car. (T, 120) Thereafter, the three men disposed of the tire jack and the clothes of Ms. Luster and each returned to his home. (T, 124) By early afternoon of the next day, Johnny Styles had gone to the police, reported what had happened, and he, William Durham, and Roger Collins were arrested. (T, 19-20)

Mr. Collins' trial was held from November 14 through November 17, 1977 in the Superior Court of Houston County (Georgia). (T, 1) In the guilt phase of his trial, the State relied primarily on the testimony of Johnny Styles and on the physical evidence connected with the crime in order to develop a case against Mr. Collins. While the State's case pointed directly

to William Durham as the more culpable of the two defendants, evidence was presented to suggest that Mr. Collins functioned as an active accomplice with respect to both crimes.[2] On behalf of Mr. Collins, his counsel presented no evidence. (T, 298) Thereafter, Mr. Collins was found guilty of murder and rape. (T, 334) At the sentencing phase which followed, on November 17, 1977, the State presented no additional evidence. The only evidence presented on behalf of Mr. Collins was the testimony of Mr. Collins himself. In mitigation, Mr. Collins testified that he had not personally struck or killed Delores Luster (T, 351), and that he had cooperated with William Durham only because he was afraid of Durham, particularly when Durham was wielding a knife as he had on the night of the homicide (id.). Mr. Collins expressed deep remorse for the events leading to Ms. Luster's death. (T, 352) Finally, Mr. Collins testified that he was eighteen years old and had only progressed through part of the eighth grade in school. (T, 349) At the end of this phase of the trial, the jury found two aggravating circumstances against Mr. Collins -- that the homicide had been committed in the course of the commission of rape, and that the homicide was outrageously or wantonly vile, horrible, or inhuman in that it involved torture or depravity of mind -- and sentenced Mr. Collins to death. (T, 383)

On March 6, 1979, the Georgia Supreme Court affirmed Mr. Collins' convictions and sentence of death.[3] On March 29, 1979, the Supreme Court denied a timely motion for rehearing. Collins

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[2] In addition, the State introduced, over Petitioner's objection, two statements made by Mr. Collins to the police. Although the statements were contradictory, and for other reasons should have been suppressed, in one of the statements Mr. Collins admitted that both Durham and he had struck Ms. Luster with the jack. (T, 212-213, 254-255)

[3] Mr. Collins' sentence of fifteen years' imprisonment for his rape conviction was also affirmed.

v. State, 243 Ga. 291, 253 S.E.2d 729.

On August 9, 1979, Mr. Collins tendered for filing a Petition for a Writ of Certiorari in this Court (No. 79-5188). On May 27, 1980, this Court entered the following order with respect to Mr. Collins' petition:

> "The motion of petitioner for leave to proceed in forma pauperis and the Petition for writ of certiorari is granted. The judgment is vacated insofar as it leaves undisturbed the death penalty imposed and the case is remanded to the Supreme Court of Georgia for further consideration in light of Godfrey v. Georgia, 446 U.S. ___ (1980)."

446 U.S. 961. On September 8, 1980, on remand, the Georgia Supreme Court adhered to its prior affirmance of Mr. Collins' death sentence. Collins v. State, 246 Ga. 261, 271 S.E.2d 352.

On November 5, 1980, Mr. Collins tendered for filing his second Petition for a Writ of Certiorari in this Court from the opinion of the Georgia Supreme Court on remand. (No. 80-5672) On January 12, 1981, this Court denied certiorari. Thereafter, on March 19, 1981, Mr. Collins filed a petition for a writ of habeas corpus in the Superior Court of Butts County (Georgia). Following proceedings before the Superior Court, the court entered an order, on August 21, 1982, denying Mr. Collins' petition for a writ of habeas corpus. (This order is attached hereto as Appendix A.) Relevant to the questions presented herein, the Superior Court ruled as follows:

> "In paragraph 30 [of the state habeas corpus petition], Petitioner claims the jury instruction on the (b)(7) aggravating circumstance was improper and violated his Eighth and Fourteenth Amendment rights.
>
> "The Supreme Court has already reconsidered Petitioner's sentence in light of Godfrey v. Georgia, supra, and concluded the (b)(7) aggravating circumstance was properly applied. Collins v. State, 246 Ga. 261 (1980). Implicit in the finding that (b)(7) was properly applied would be the fact that the jury charge on (b)(7) was not improper.
>
> "Accordingly, this allegation is found

to be without merit.[4]

* * *

> "In paragraph 36, Petitioner claims constitutional deprivation by the failure of the trial court to require [the jury] to make findings of fact with respect to mitigating circumstances.
>
> There is clearly no such requirement under Georgia's death penalty statute. Accordingly, this allegation is found to be without merit."

Appendix A, at 12-13.

Upon entry of this order, Mr. Collins filed a timely notice of appeal, along with an application for a certificate of probable cause to appeal in the Georgia Supreme Court. However, on December 3, 1981, the Supreme Court denied Mr. Collins' application without opinion. (This order is attached hereto as Appendix B.) Proceedings before this Court were then commenced.

REASONS FOR GRANTING THE WRIT

I. THE GEORGIA SUPREME COURT'S REAFFIRMANCE OF PETITIONER'S DEATH SENTENCE FOLLOWING A GODFREY REMAND DID NOT CURE THE DEFECTS IN THE TRIAL COURT'S SENTENCING INSTRUCTIONS OR THE GEORGIA SUPREME COURT'S INCONSISTENT STANDARD OF REVIEW OF DEATH SENTENCES BASED UPON GA. CODE ANN. §27-2534.1(b)(7)

On May 19, 1980, this Court held that the Georgia Supreme Court had adopted an unconstitutionally broad and vague construction of the aggravating circumstance set forth in the Georgia death penalty statute at Ga. Code Ann. §27-2534.1(b)(7),[5] when it affirmed the death sentence of Robert Godfrey in Godfrey v. State, 243 Ga. 302, 253 S.E.2d 710 (1979). Godfrey v. Georgia,

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[4] With the same analysis, the Superior Court concluded that Petitioner's related claim (in paragraph 31 of the state habeas petition) -- that the Georgia Supreme Court failed to review the defective jury instruction on remand, and that it again failed to apply a consistent, limited construction of the (b)(7) circumstance on remand -- was likewise without merit. (See Appendix A, at 12.)

[5] The murder "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim."

446 U.S. 420 (1980). At the same time that Godfrey was decided, Petitioner's case was also pending review by this Court. Because Petitioner's request for review had also raised the legitimacy of the application of the (b)(7) aggravating circumstance to his case, the Court granted certiorari, vacated Petitioner's death sentence, and remanded his case to the Georgia Supreme Court for consideration in light of Godfrey. Collins v. Georgia, 446 U.S. 961 (1980). On remand, the Georgia Supreme Court reaffirmed its prior decision and reinstated Petitioner's death sentence. Collins v. State, 246 Ga. 261, 271 S.E.2d 352 (1980). In state habeas corpus proceedings thereafter, Mr. Collins claimed that on remand the Georgia Supreme Court had failed to follow the principles outlined in Godfrey. However, the Georgia courts disagreed, maintaining that Godfrey had been followed.

Thus, Mr. Collins again seeks this Court's review, on the basis that the Georgia courts have continued to uphold his death sentence in the face of Godfrey's clear mandate for reversal. In common with numerous other capital defendants in Georgia, Mr. Collins still faces death, despite two clear violations of the constitutional principles articulated in Godfrey. First (b)(7) was not given an appropriately narrow construction by the trial court in Mr. Collins' case when the jury was instructed concerning (b)(7). Second, on the remand of Mr. Collins' case to the Georgia Supreme Court, that court failed to review the nature of the instructions given to the jury concerning (b)(7) and further, itself failed to apply an appropriately narrow construction of (b)(7) -- consistent with its construction of (b)(7) in other cases -- in the course of its review of the application of that aggravating circumstance to Petitioner's case.

A. A death sentence based upon (b)(7) cannot stand unless (b)(7) was given an appropriately limited construction by the trial court in its instructions to the jury, and that construction was applied on review by the Georgia Supreme Court

Godfrey v. Georgia, 446 U.S. 420 (1980) holds that a death sentence based upon a finding of the aggravating circumstance set forth in (b)(7) cannot stand under the Eighth and Fourteenth Amendments, unless all three of the following conditions are met. First, a limiting construction must be placed upon (b)(7) by the jury instructions. This construction must "channel the sentencer's discretion by 'clear and objective standards' that provide 'specific and detailed guidance,' and that 'make rationally reviewable the process for imposing a death sentence.'" (Footnotes omitted.) 446 U.S. at 428. It is plain that the language of (b)(7), unless modified by restrictive jury instructions or judicial interpretation, fails to meet this test, because the language includes the phrase "outrageously or wantonly vile, horrible and inhuman," which the plurality in Godfrey found to be insufficient to imply "any inherent restraint on the arbitrary and capricious infliction of the death sentence." Id. Moreover, the plurality noted, "[a] person of ordinary sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrible and inhuman.'" 446 U.S. at 428-429.

Second, the limiting construction of (b)(7) must actually be charged to the jury at trial. Since the purpose of the sentencing standards required by both Furman v. Georgia, 408 U.S. 238 (1972) and Gregg v. Georgia, 428 U.S. 153 (1976) is to "channel the sentencer's discretion," Godfrey v. Georgia, supra, 446 U.S. at 428 (emphasis supplied), the Court makes plain that the constitutional infirmity in Godfrey was that the sentencer's discretion had not been channeled, for the view that nearly every murder was covered by this aggravating circumstance

> "...may, in fact, have been one to which the members of the jury in this case subscribed. If so, their preconceptions were not dispelled by the trial judge's sentencing instructions. These gave the jury no guidance concerning the meaning of any of §(b)(7)'s terms."

446 U.S. at 429.[6]

Third, the limiting construction of (b)(7) must also be applied by the Georgia Supreme Court in its review of the sentence on appeal. Because the state supreme court in any death penalty statutory scheme is a constitutionally necessary safeguard "to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants," Gregg v. Georgia, supra, 428 U.S. at 204, the state supreme court must be an independent guarantor that no death sentence is imposed arbitrarily, without the clear guidance of jury discretion. For this reason, the Georgia Supreme Court must, at the very least, apply an appropriately limited construction of (b)(7) in its review of the evidence supporting a death sentence. This was precisely what the Georgia Supreme Court failed to do in Godfrey, however, for it affirmed Mr. Godfrey's sentence despite the fact that Mr. Godfrey's crime did not satisfy any of the limiting criteria imposed on (b)(7) by prior decisions of the Georgia Supreme Court. 446 U.S. at 431-432. Under these circumstances, Godfrey's sentence had to be vacated, for there was "no principled way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not." 446 U.S. at 433.

B. The trial court failed to charge the jury with a properly limited construction of (b)(7)

As noted in Mr. Collins' state habeas corpus petition, the only instruction to the jury by the trial court concerning the (b)(7) aggravating circumstance, or concerning either aggravating circumstance for that matter, was the following:

> "The State contends that two statutory aggravating circumstances exist in this case

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[6] In the trial court's instructions in Godfrey, the judge had simply read the statutory language of §(b)(7) to the jury. No attempt was made to explain or limit the application of the language. 446 U.S. at 426.

> which would authorize consideration of the death penalty. . . . Secondly, the State contends that the offense of murder was outrageously or wantonly vile, horrible, or inhuman in that it involved torture or depravity of mind."

(T, 377) Not only was the court's charge on (b)(7) simply a recitation of the statutory language; the statutory language was not even completely recited, for the last phrase of the (b)(7) language -- "or an aggravated battery to the victim" -- was completely omitted. This charge to the jury failed to meet the first and second conditions imposed by Godfrey.

As noted above, Godfrey requires, first, that a limiting construction be placed upon (b)(7) by the instructions to the jury, and second, that the limiting construction actually be charged to the jury at trial. Unquestionably, no such limiting construction was placed upon (b)(7) or charged to the jury at Mr. Collins' trial. That the Georgia Supreme Court may later apply a limiting construction of (b)(7) to the facts of Petitioner's case in order to uphold the death sentence cannot compensate for this failure in the instructions to the jury. As Godfrey notes, sentencing discretion must be channeled by "'clear and objective standards' that provide 'specific and detailed guidance,' and that 'make rationally reviewable the process for imposing a death sentence.'" 446 U.S. at 428. Thus, only when the sentencer's discretion is sufficiently guided does the process for imposing a death sentence become rationally reviewable. Henry v. Wainwright, 661 F.2d 56, 59 (5th Cir. 1981); Stephens v. Zant, 631 F.2d 397, 406 (5th Cir. 1980), modified, 648 F.2d 446 (5th Cir. 1981), cert. granted, _____ U.S. _____ (October 5, 1981)(No. 81-89). When the sentencer's discretion is not adequately guided, that exercise of discretion simply cannot be reviewed in a rational manner, no matter what the reviewing court thinks about the facts of the case "fitting into" a limited construction of (b)(7). Henry v. Wainwright, supra; Stephens v.

Zant, supra. Under such circumstances, the very fact that an unlimited instruction on (b)(7) was given may be the sole reason for the jury's imposition of a death sentence. Godfrey v. Georgia, supra, 446 U.S. at 429. To conclude that such an erring instruction is harmless is to engage in a "guessing game" which risks the imposition of the death penalty in the face of plain Godfrey error. Such speculation is constitutionally intolerable in a death penalty case. See Eddings v. Oklahoma, _____ U.S. _____ (January 19, 1982)(No. 80-5727, slip opinion, at 2-3, Justice O'Connor concurring).

Thus, the trial court's failure to appropriately limit (b)(7) in its charge to the jury absolutely forecloses the use of (b)(7) as an aggravating circumstance supporting the death penalty in Mr. Collins' case.

C. In its review of Mr. Collins' sentence on remand, the Georgia Supreme Court failed to examine the actual charge to the jury on (b)(7) and also applied a construction of (b)(7) upon review which itself was insufficiently limited

The Georgia Supreme Court committed two errors in its review of the application of (b)(7) in Mr. Collins' case following the remand of Mr. Collins' case by this Court. First, the Georgia Supreme Court failed to examine the question of whether the jury in this case received an appropriately limited instruction concerning the (b)(7) aggravating circumstance. On the basis of the preceding discussion, had the court examined this question, it would have found unquestionably that there was no limited construction of (b)(7) charged to the jury.

Second, despite its failure to examine the question of the instruction as charged to the jury at Mr. Collins' trial, the Georgia Supreme Court, nonetheless, went on to "review" the application of that circumstance to the facts of Mr. Collins' case. On the basis of the preceding discussion, Mr. Collins submits that by doing this, the Georgia Supreme Court was engaged

in a meaningless exercise, for under circumstances where no limiting construction had been given to (b)(7) in the jury charge, that error could not be saved by an application of a more limited construction by the Georgia Supreme Court in its review of the case. Nonetheless, even if the Georgia Supreme Court's exercise were not meaningless, the construction of (b)(7) applied to Mr. Collins' case was also insufficiently limited.

As noted by the Georgia Supreme Court in its opinion on remand, the court applied the limited construction of (b)(7) which it had discussed in Hance v. State, 245 Ga. 856, 268 S.E.2d 339 (1980). In Hance, the court held that a particular application of (b)(7) will be upheld if the evidence satisfied the first major component of (b)(7) (the homicide was "outrageously or wantonly vile, horrible or inhuman"), and if the evidence further satisfies one of the three subparts of the second major component of (b)(7) (that the homicide involved "torture, depravity of mind, or an aggravated battery to the victim"). Petitioner submits that, as applied to his case, this limited view of (b)(7) was insufficiently limited.

With respect to evidence which will satisfy the first major component of (b)(7), the court in Hance indicated that these words -- "outrageously or wantonly vile, horrible or inhuman" -- mean virtually the same thing, and they are meant to distinguish the "ordinary" homicide from those homicides for which the death penalty ought to be imposed. Such reasoning is clearly not a limiting construction of this language, but simply begs the question as to which homicides this language appropriately applies. In its opinion on remand, nonetheless, the Georgia Supreme Court found that the murder involved in this case was different from "ordinary murders" in the following manner.

> "The evidence in this case clearly establishes that the victim was not related to the appellant. She was not threatening the appellant nor was she causing any emotional trauma to him. The

> appellant left the scene and attempted in every manner to avoid the prosecution for his crime."

Collins v. State, supra, 271 S.E.2d at 353. These facts simply do not distinguish this murder from any other "ordinary" murder, for in the "ordinary" murder, the victim will not be related to the defendant, the victim will likely not be threatening the defendant nor causing any emotional trauma to him, and the defendant will not immediately turn himself in. In fact, the ordinary murder seems to be precisely that which the Georgia Supreme Court, in Petitioner's case, declared "not ordinary."

With respect to the second component of (b)(7), the Georgia Supreme Court on remand found that the evidence satisfied that part of the second component indicating that the murder had been committed by "torture." The court found torture here by virtue of the "serious sexual abuse" committed upon the victim prior to her death. Collins v. State, supra, 271 S.E.2d at 354. However, when the facts of this case are examined, the facts do not show beyond a reasonable doubt that Roger Collins engaged in "serious sexual abuse" of the victim prior to her death. The facts do show that Roger Collins engaged in sexual intercourse with the victim, but the facts at least raise a reasonable doubt as to whether that sexual intercourse was rape or consensual intercourse. See pp. 2 - 3, supra. Even if the intercourse were deemed to be rape, however, the intercourse was not the same as "serious sexual abuse," for it was done without additional injury, or personal threat by Mr. Collins, to the victim. In fact, all indications were that the victim did not feel "abused" until she had intercourse with the other two men involved in this transaction. (T, 140-157) Thus, with respect to Roger Collins personally, the facts adduced at trial did not show beyond a reasonable doubt that he had engaged in "serious sexual abuse" of the victim prior to her death.

For these reasons, even when a "limited" construction of (b)(7) is applied to Mr. Collins' case, (b)(7) still provides no principled basis upon which to differentiate the imposition of the death sentence upon Roger Collins from the non-imposition of the death sentence upon others.

II. UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS, THE GEORGIA CAPITAL SENTENCING SCHEME MUST REQUIRE THE SENTENCER TO MAKE FINDINGS CONCERNING MITIGATING CIRCUMSTANCES IN ORDER TO MAKE THE PROCESS FOR IMPOSING A DEATH SENTENCE RATIONALLY REVIEWABLE

When a jury imposes a death sentence, as it did here, the only specific findings it makes are as to aggravating circumstances. The jury is not required to list the mitigating circumstances it also considered; rather, the jury is simply required to complete and sign the following form statement, as it did here:

> "We, the jury, recommend the death penalty, and find the following statutory aggravating circumstances: [the specific aggravating circumstances found are then listed]."

(T, 379, 383) Pursuant to this form statement, a reviewing court cannot determine whether the jury considered and properly or improperly rejected various mitigating circumstances, considered and found various mitigating circumstances but also found that they did not outweigh the aggravating circumstances, or considered nothing at all concerning mitigation. Because of this gap in the record made of the jury's exercise of sentencing discretion, that exercise of discretion is essentially unreviewable. Because this Court has consistently required that the process by which a death sentence is imposed be rationally reviewable,[7] the Court should grant certiorari to consider the problem of unreviewability created by this defect in the Georgia capital sentencing scheme.

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[7] Woodson v. North Carolina, 428 U.S. 280, 303 (1976); Godfrey v. Georgia, supra, 446 U.S. at 428.

The problem created by the foregoing practice arises when the Georgia Supreme Court attempts to undertake its review functions mandated by Ga. Code Ann. §27-2537(c)(to determine whether the death sentence was imposed under the influence of passion, prejudice, or some other arbitrary factor and whether the death sentence is excessive) and by Ga. Code Ann. §27-2537(i) (to determine whether the death sentence is factually substantiated). In order to review the jury's exercise of discretion with respect to the sentence determination, the Court must know what the jury found with respect to mitigating circumstances in and of themselves. Did they ignore certain facts of record? Did they take such facts into account but fail to give them sufficient weight? Did they disbelieve certain facts which a jury operating rationally would have believed? Without the benefit of the jury's findings concerning mitigating circumstances, the reviewing court simply cannot honestly determine whether the evidence supports the jury's recommendation of a death sentence. A major portion of the jury's exercise of discretion is simply concealed from the view of the Georgia Supreme Court.

The constitutional defect in such a statutory scheme thus becomes clear. In the absence of specific findings which would fully disclose why the jury imposed a death sentence, the Georgia Supreme Court must scan the record and make its own findings as to mitigation. This is precisely the evil condemned, although in a different context, in Presnell v. Georgia, 439 U.S. 14, 15-16 (1978), for it diverts the Supreme Court from an examination of the jury's exercise of discretion, which is the critical examination under current capital-sentencing procedures. See, e.g., Godfrey v. Georgia, supra, 446 U.S. at 428-429 (The State must "channel the sentencer's discretion by 'clear and objective standards' that provide 'specific and detailed guidance' and that 'make rationally reviewable the process for imposing a death sentence.'")(Emphasis supplied). "ith such concealment of jury

discretion in the record, Georgia's capital-sentencing scheme must fail.

> "Since the State must administer its capital-sentencing procedures with an even hand, see Proffitt v. Florida, 428 U.S. at 250, 49 L.Ed.2d 913, 96 S.Ct. 2960, it is important that the record on appeal disclose to the reviewing court the considerations which motivated the death sentence in every case in which it is imposed. Without full disclosure of the basis for the death sentence, the ... capital-sentencing procedure would be subject to the defects which resulted in the holding of unconstitutionality in Furman v. Georgia."

Gardner v. Florida, 430 U.S. 349, 361 (1977)(emphasis supplied).

CONCLUSION

For the reasons expressed herein, the Petitioner, Roger Collins, respectfully requests that this Court grant his petition for a writ of certiorari to the Georgia Supreme Court.

March 2, 1982

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